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WISCONSIN OPERATING ENGINEERS LOCAL 139 FILES LAWSUIT AGAINST STATE, ACT 10 VIOLATES FIRST AMENDMENT RIGHTS

(Milwaukee) – The Wisconsin Operating Engineers Local 139 filed a lawsuit in federal court Friday alleging the Walker-era bill known as “Act 10” violates the First Amendment of the U.S. Constitution. Governor Tony Evers, Attorney General Josh Kaul, and WERC Director James Daley, are named as defendants in the suit. The five-count complaint outlines various ways in which Act 10 infringes on First Amendment protected free speech, free thought and free association.

“Act 10 was a heartless attempt to destroy public-employee unions in particular and unionism in general and we won’t sit idly by while our first amendment rights are being destroyed,” said Terry McGowan, president and business manager of Local 139 and one of the parties to the lawsuit. IUOE Local 420 is also a plaintiff in the lawsuit.

Local 139 filed a similar lawsuit challenging Act 10 last year, but withdrew that challenge pending the outcome of a critical U.S. Supreme Court case – *Janus v. AFSCME*. The *Janus* decision overruled prior Supreme Court precedent, expanding the scope and impact of the First Amendment, particularly concerning public-sector unions’ fee arrangements.

Local 139’s lawsuit states:

“This lawsuit is brought in good faith for the Court to evaluate Act 10, in light of the decision in *Janus*, and as such raises arguments not previously ruled upon by either the District Court or the United States Court of Appeals for the Seventh Circuit with respect to Act 10.”

Of particular concern are Act 10 provisions limiting the topics on which Unions can speak, prohibiting certain disfavored speech, and compelling speech from those who prefer to exercise their right to remain silent. For instance, Act 10 requires annual union recertification elections and penalizes those who choose not to vote:

“It declares that a non-vote is a vote against Union representation. By equating not voting with voting no, Act 10 directly infringes on the rights of public employees to not engage in speech.”

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According to the suit, Local 139 has been directly harmed by this provision of Act 10 in two recertification elections, the results of which were certified in April 2019. Local 139 received 100% of all ballots cast, but because Act 10 equates not voting with a “no” vote, it was not recertified as the bargaining unit representative for such employees.

The case has been filed with the U.S. District Court for the Eastern District of Wisconsin in Milwaukee. The lawsuit seeks an injunction against Act 10 preventing its further implementation as a state law, as well as declaratory relief.

Governor Scott Walker signed into law Act 10 in 2011 prompting public outrage and massive capitol protests as the new law stripped the powers of public-sector unions and severely limited their future abilities to organize and retain members.

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Established in 1902, Operating Engineers Local 139 is a statewide trade union that primarily represents skilled Operators of heavy construction equipment and mechanics who service the machines. The union has 10,000 active and retired members and is headquartered in Pewaukee. Local 139 also maintains district offices in Madison, Appleton and Altoona, as well as a state-certified training school for Operating Engineers in Coloma. For more information, please go to www.iuoe139.org